

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Please note that, if the department of revenue does not return to the professional baseball district the sales tax money to fund the district's special debt service reserve fund requirement under s. 229.74 (5), then the legislature, under s. 229.74 (7), is "morally obligated" to appropriate sufficient moneys to fund this requirement. If the legislature chooses to carry out this "moral obligation" and fund the special debt service reserve fund requirement from general purpose revenue, then this amendment would not result in any general purpose revenue savings.

This drafter's note is to alert you to the possibility that, should this amendment become law, it could be challenged as a violation of that part of the public purpose doctrine which requires that "[A] tax must be spent at the level at which it is raised." *State ex. rel. Wisconsin Dev. Authority v. Dammann*, 228 Wis. 147, 183 (1938). "Wisconsin has long recognized this rule of constitutional interpretation, *i.e.*, the purpose of the tax must be one which pertains to the public purpose of the district within which the tax is to be levied and raised." *Buse v. Smith*, 97 Wis. 3d 550, 577 (1976). Under this amendment, the tax imposed by one local level of government, the professional baseball park district, will be spent by another level of government, the state.

Certainly, the principle that a tax must be spent at the level at which it is raised "does not mean that one unit of government may not collect tax revenue, commingle it with other funds, and then make payments to other units of government" as the state annually does by distributing "billions of dollars in aid to other units of government." See Jack Stark, *The Authority to Tax in Wisconsin*, in Vol. 77, number 3 of the *Marquette Law Review*, 457, 467. Money is fungible, and as the state distributes aid to local units of governments it "cannot plausibly be argued that aid programs violate the principle that the taxing unit and the spending unit must be identical" *Id.* In this case, however, although the tax money from the district is comingled with other money in the general fund, the tax money from the district is designated to offset GPR for the purpose of funding the choice program.

It is difficult to predict how a court would rule on this question should your amendment become law, but I thought you should at least be aware of the issues raised in this drafter's note.

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